

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ *Reserved on: 5th December, 2018*
Pronounced on: 21st December, 2018

LPA 264/2016

POONNAMMA VISHWANATHAN Petitioner

Through: Dr. Jose P. Verghese, Advocate with
Mr. K. Gireesh Kumar, Advocate.

versus

M/S MOOLCHAND KHAIRATI RAM HOSPITAL & AYURVEDIC
RESEARCH INSTITUTE Respondents

Through: Mr. M.Y. Khan, Advocate.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J

1. The present appeal under clause X of the Letters Patents Appeal is directed against the judgment dated 21st December 2015 passed by the learned Single Judge deciding- W.P.(C) 13752/2009 filed by the employee Poonnamma Vishwanathan (Appellant herein) and W.P.(C) 2957/2010 filed by the Management- Respondent.

2. By way of the impugned judgment, the learned Single Judge has *inter-alia* remanded Management's application under Section 33(2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act'), bearing OP No. 71/2005 (seeking approval for dismissal of the Appellant) to the Industrial Tribunal for fresh adjudication.

Scope of challenge before the learned Single Judge

3. In W.P.(C) 13752/2009, Appellant herein sought implementation of the orders dated 10th January 2005, 31st March 2006 and 8th May 2006 passed by the Industrial Tribunal. On the other hand in W.P.(C) 2957/2010, the Management challenged the validity of the aforesaid orders.

Factual Background

4. The Appellant was working as Auxiliary Nurse with Moolchand Kharati Ram Hospital and Ayurvedic Medical Research Institute (Respondent) w.e.f. 16th February 1987. According to the Respondent, Appellant indulged in several acts of misconduct. A charge sheet dated 20th August 2001 was served upon the Appellant containing the following charges:

“Ms Ponamma Vishwanathan
A.N.M.
Nursing Department,
MCKR Hospital,
New Delhi- 110024

Sub: CHARGESHEET

You are working in the Hospital as A.N.M.

It has been reported that you along with Ms Marykutty Thomas and Ms LaxmiKutty M.N. instigated Dharna and participated in the same near the main gate of the Hospital from 01.05.2000 with the support of some dismissed and suspended employees as well as outsiders. There was also a relay hunger strike alongwith the dharna. The Dharna and the relay hunger strike used to be round the clock and continuous. You alongwith Ms Marykutty Thomas

and Ms Laxmikutty M.N. went around the hospital and asked the workers, nurses and other employees to join the Dharna and also participated in the relay hunger strike.

Occasionally, the Dharna became violent and could have led to immense danger to life and property. Due to Dharna, there was serious problem to patients, their visitors, doctors and other para medical staff and employees. You alongwith Ms Marykutty Thomas and Ms Laxmikutty M.N. were advised by your superior Dy. Nursing Superintendent Ms Sumathy Pillai not to indulge in such illegal and unjustified acts and such activities are never expected specially from the nursing staff. Their advice was of no use and you kept on instigating and participating in Dharna from time to time. The Dharna at the main gate had serious implications on the functioning and reputation of the hospital by lowering the image of the Hospital in the eyes of the visitors. The above is a serious misconduct on your part.

Considering the report of DNS, Ms Sumathy Pillai, a meeting was organized by Shri Shravan Talwar, Hony Secretary at about 12 noon on 12.05.2000 in which you alongwith Ms Marykutty Thomas and Ms Laxmikutty M.N. as well as Ms Sumathy Pillai, DNS and other executives of the hospital Mr S K Sagar, General Manager(F&A) and Mr Dinesh Kumar, Office Supdt. were also called. When the meeting was in progress, you alongwith Ms Marykutty Thomas and Ms. Laxmikutty M.N. in collusion with each other as well as in collusion with Shri. Vijender Singh, a dismissed employee of the hospital, who has also been claiming himself to be the General Secretary of an alleged union namely MCKRH Karamchari union made a false complaint on telephone to Police Control (PCR) on telephone No. 100. Due to coming of the police in the Hospital, there was total disturbance and commotion. The work was also seriously disturbed for over an hour. The police investigated and made enquiries and found that this was a false and baseless complaint. This act of your in connivance with others of making a false complaint against the senior executives of the Hospital, thereby disturbing the meeting, disturbing the work of the hospital,

creating commotion in the Hospital is a serious misconduct. You alongwith Ms Marykutty Thomas and Ms Laxmikutty M.N. filed with Delhi commission for Women (DCW) a false and fabricated complaint against Senior Executives of the Hospital stating that you were pressurized to resign at a gun point on 12.05.2000.

You alongwith Ms Marykutty Thomas and Laxmikutty M.N. alongwith AIPWA also filed a wholly baseless and fabricated complaint against the senior executives of the hospital about alleged sexual harassment, to DCW on 15.09.2000. Ultimately, the DCW has given its enquiry report dated 16.07.2001 holding that the complaint about the charge of sexual harassment has not been established. Filing of baseless and fabricated complaint regarding pressure at gunpoint as well as for alleging sexual harassment against senior executives of the Hospital is a serious misconduct. Your cases are further aggravated, considering that you are a member of the nursing staff. It is also not possible to repose confidence in you.

The above are serious misconducts and you are advised submit your explanation to the chargesheet, if any, within six days. If no explanation is received within the stipulated time, it will be presumed that you have no explanation to offer and further action will follow. You are hereby placed under suspension forthwith till further orders.....”

5. Appellant submitted her explanation to the chargesheet, but the same was not found satisfactory and an Inquiry officer was appointed to conduct a domestic inquiry against her. He submitted the report dated 2nd July 2002, holding the Appellant guilty of charge of misconduct. Appellant submitted her comments on the enquiry report and after considering the same, the Respondent issued a show-cause notice dated 13th January 2003, proposing to dismiss her from the service. This was followed by a reminder dated 15th January 2003 and then by the order of dismissal dated 6th February 2003.

6. Thereafter, the Management filed an application under Section 33(2) (b) of the ID Act before the Industrial Tribunal, seeking its approval for dismissing the Appellant from the service. On completion of the pleadings, following preliminary issue was framed:

“Whether the applicant has conducted a fair and valid inquiry in accordance with principle of natural justice? OPA”

7. The Tribunal carefully perused the statements of the witnesses on this issue and noted that AW-1, Sh. Raj Pal Chaudhary has admitted that he had not permitted the delinquent official to bring lawyers as Defence Assistants (DA). The Tribunal also noted Sub-rule 4(b)(a) of Rule 14 of The Industrial Employment (Standing Orders) Act, 1946 and held that the delinquent employee is entitled to a DA from the union of which he/she is a member. In light of the above discussion, the Tribunal vide order dated 10th January 2005, held the enquiry proceedings to be vitiated, on the ground that the delinquent employee was deprived of her valuable right of representation.

8. Notwithstanding the adverse finding, the Management was given liberty to lead evidence to prove the charge of misconduct before the Court. It opted to avail the same and accordingly, further issues were framed as follows:

“(i) Whether the respondent has committed the misconduct as alleged?
(ii) Whether the applicant remitted full one month’s wages to the respondent in compliance of Section 33 (2) (b) of the ID Act?
(iii) Relief”

9. In order to prove the aforementioned issues, the Management examined AW-2

(Ms. Sumanthi Pillai) and AW-3 (Shri M.K. Kaushik). In rebuttal, Appellant examined herself. The Industrial Tribunal decided issue No. 1 against the Management essentially on the ground that there was no evidence before the Court to sustain the charge of misconduct and the statement of AW-2 was disregarded on the ground of being hearsay. As regards issue No. 2, the Industrial Tribunal gave its finding in favour of the Management and held that before filing the application, Management had duly deposited one month's salary in the Bank Account of the Appellant. In view of the findings on issue No. 1 and 2, the Industrial Tribunal vide order dated 31st March 2006 held that since the Management had failed to prove the charge of misconduct, the application deserves to be rejected. As a consequential order, Management was directed to reinstate the Appellant in service within one month with continuity of service alongwith entire arrears of salary from February 2003 till her reinstatement (excluding the amount deposited in her bank account).

10. During the pendency of the proceedings before the Tribunal, the Appellant had also raised an Industrial Dispute, challenging her termination from service. Since the conciliation proceedings failed, Government of NCT of Delhi referred the dispute for adjudication to the Industrial Tribunal with the following terms of reference:

“Whether the services of Smt. Poonamma Vishwanathan, W/o Shri Vishwanathan have been dismissed from service illegally and/or unjustifiably by the management, and if so, to what relief is she entitled and what directions are necessary in this respect?”

11. The aforesaid reference was registered as ID No. 417/2003. Prior to final adjudication of the aforementioned Industrial Dispute, the OP No. 71/2005 (application seeking approval for dismissal of the Appellant) was decided. Thus, on account of the findings given on issues No. 1 to 3 (in OP No. 71/2005) as noted in the order dated 31st March 2006, the Industrial Dispute (ID No. 417/2003) was rendered infructuous. Resultantly, the Appellant did not press her claims and the Tribunal taking note of the said development passed a 'No Dispute Award' on 8th May, 2006.

12. Aggrieved by the orders dated 10th January, 2005, 31st March, 2006 and 8th May 2006, the writ petitions were filed by both, the Appellant as well as the Management.

Findings of the learned Single Judge

13. The finding of the learned Single Judge can be summarised as under:-

(a) The learned Single Judge held that the Industrial Tribunal has misconstrued the scope of Section 33(2) (b) of the ID Act and has failed to take note of the distinction between deciding the application under the aforesaid provision and deciding a labour dispute. The court further held that while considering the application under section 33(2) (b) of ID Act, the Industrial Tribunal is required to examine whether a *prima facie* case has been made out or not regarding the validity of the domestic enquiry against the delinquent employee (reference is made to para 23,24,34 and 35 of the impugned judgment). On this issue, the learned Single Judge has placed reliance on several decisions passed by the Apex Court in the case titled as ***Bangalore Woollen, Cotton and Silk Mills Co. Ltd. v. Dasappa (B) (Binny Mills Labour Union)***, (1960) II LLJ 39 SC, ***Lord Krishna Textile Mills v. Its Workmen***, AIR 1961 SC 860, ***Martin Burn***

***Ltd. v. R.N. Banerjee*, (1958) I LLJ 247 SC and *Apparel Export Promotion Council v. A.K. Chopra*, 1 (1999) SLT 212.**

(b) The Industrial Tribunal has wrongly held that the enquiry proceedings were vitiated on the ground that the Appellant was not permitted to have due representation. The Court noted that the witnesses of the Management were cross examined by the Appellant, and therefore, the Industrial Tribunal ought to have examined the question as to whether by following such a procedure, any prejudice has been caused to the Appellant. This question was required to be examined first before holding that the enquiry to be vitiated due to non-representation of the Appellant (reference is made to para 31 of the impugned judgment).

(c) The jurisdiction of the Tribunal is confined to granting approval/rejecting of the application and it cannot order reinstatement with back wages (reference is made to para 36 of the impugned judgement).

Directions given by the learned Single Judge

14. Orders dated 10th January, 2005 and 31st March, 2006 were set aside. Application under Section 33(2) (b) of the ID Act (OP No. 70/2005) remained before the Industrial Tribunal for fresh adjudication. Award in ID 417/2003, dated 8th May, 2006 was also set aside. The Tribunal has been directed to afford opportunities to both the parties to lead evidence and decide the matter within a period of six months. (paras 36-39 of the impugned judgment)

Submissions of the Parties

15. The Court has heard the learned counsels for the parties.

16. Learned counsel for the Appellant has primarily challenged the impugned judgment on the ground that the learned Single Judge has erred in allowing the Management to challenge the order dated 10th January, 2005 at a belated stage. He submitted that the Industrial Tribunal vide order dated 10th January, 2005 decided the preliminary issue and held that the enquiry proceedings were vitiated. At that stage, if the Management was aggrieved with the outcome, it ought to have challenged the same. Since the Management did not do so and instead opted to lead evidence on the additional issues framed by the Industrial Tribunal, the Management was precluded to assail the order dealing with the preliminary issue regarding the enquiry proceedings.

17. It was further submitted that the learned Single Judge has grossly erred by considering the materials/evidence brought before the Enquiry Officer at the stage of domestic enquiry, while deciding the challenge concerning the final order dated 31st March, 2006. Elaborating this submission, the learned counsel argued that only “fresh evidence” brought before the Industrial Tribunal by the Management could be considered. The “material before the domestic enquiry” could not be treated as “material on record”. The Industrial Tribunal has rightly decided the application under Section 33(2) (b) of the Act by taking into account only such evidence that was brought before it during the trial. The learned Single Judge erred by alluding to the evidence before the domestic enquiry to decide the application seeking approval for dismissal. To substantiate the above submission, the learned counsel for the Appellant has relied upon a decision of the Apex Court in the case of *Neeta Kaplish v. Presiding Officer, Labour Court* AIR 1999 SC

698 wherein the Court has held that the record pertaining to the domestic enquiry would not constitute “fresh evidence” as those proceedings have already been found by the Labour Court to be defective. Such record would not constitute material on record. The learned counsel further emphasised that the Management has challenged the orders of the Industrial Tribunal after more **than 5 years** and such belated challenge could not be permitted , particularly in respect of the order on the preliminary issue. It is only when the Appellant sought implementation of the orders of the Tribunal, that the Management woke up and challenged the said orders in order to deprive the Appellant of it’s benefit.

18. In sum and substance, the submission of the learned counsel for the Appellant is that once the Management had chosen to lead evidence before the Industrial Tribunal after passing of the order dated 10th January 2005, the proceedings before the Enquiry Officer have no application/relevance for deciding the final order of rejection of the application.

19. On merits, the learned counsel for the Appellant argued that the Industrial Tribunal has rightly come to the conclusion that there is no evidence to sustain the charge of misconduct, as the witness produced before the Court by the Management did not have first-hand knowledge about the allegations levelled against the Appellant. The statement of the witnesses does not prove the charge of misconduct and has been rightly disbelieved by the Industrial Tribunal and the Learned Single has erred in overlooking this critical aspect.

20. Per contra, the learned counsel for the Management urged that there was sufficient material before the Industrial Tribunal to prove the charge of misconduct. The counsel urged that the Management being a hospital is not an industrial establishment as per the Section 2(e) of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as “IESO” Act). He further submitted that the IESO Act applies only to “industrial establishment” as defined under the IESO Act and since a coordinate Bench of this Court has held that a hospital is not an industrial establishment, therefore, the said Act is not applicable. He submitted that the Industrial Tribunal had committed an illegality by not following the well settled law relating to domestic enquiry in respect of the standard of proof. He further submitted that there is no rule that requires the Management to provide a right of representation to the Appellant by permitting her to bring an outsider before the Enquiry Officer. The Management allowed the Appellant to be represented by a co-worker and this was sufficient compliance of law. The Tribunal had erred in not examining the question of prejudice on account of the above and therefore the learned Single Judge has rightly concluded that the proceedings before the Enquiry Officer were conducted in accordance with the applicable law and the enquiry could not be held to be vitiated. With respect to the merit of the charges of misconduct, the learned counsel submitted that the Tribunal had committed a manifest error by relying upon the testimony of witnesses in bits and pieces and ignoring the statement of the Appellant who in her cross-examination admitted her guilt. According to the Management's counsel, hearsay evidence is not forbidden and rules of appreciation of evidence in industrial adjudication do not require a high standard of proof. The Tribunal must only examine

workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

22. The aforesaid provision is a safeguard measure for a workman. A plain reading of this Section indicates that this provision provides additional protection to a workman and mandates the Management to take the approval of the Court before dismissing an employee from service. The compliance under Section 33(2) (b) of the ID Act is necessary in such cases where proceedings are pending in respect of an industrial dispute. In case during the pendency of any proceedings in respect of an industrial dispute, Management desires to discharge or punish a workman by an order of dismissal or otherwise, it becomes mandatory on its part to take an approval of the Industrial Tribunal. Thus the order of dismissal passed by the Management, would not have any legal effect till such time the Court grants approval under Section 33(2) (b) of the ID Act. In the instant case, the order of dismissal has been passed by the Management pursuant to a domestic enquiry held against the Appellant. The relevant portion of the order of dismissal reads as under:-

“06.02.03

Mrs. Ponamma Vishwanathan,
W/o Shri Vishwanathan,
R/o 339-B, Pocket-N,
Janta Flat, Sarita Vihar
New Delhi- 110044.

DISMISSAL ORDERS

1. This has reference to the charge-sheet dated 20.08.2001. An enquiry was instituted vide our letter dated 29.08.2001 and Shri Raj Pal Choudhary was appointed as Enquiry Officer, who after conducting the enquiry submitted his report dated 02.07.2002 along with the record of the enquiry proceedings. A copy of the enquiry report was sent to you on 19.12.2002 alongwith letter dated 19.12.2002. Thereafter you submitted your reply dated 31.12.2002, alleging having received a copy of the Enquiry Report from the Enquiry Officer, which was different from the copy of the Enquiry Report sent to you by the management. The management verified from the Enquiry Officer that he had submitted only one Report, i.e. to the management. The management after considering the enquiry report, the enquiry proceedings and your comments dated 31.12.2002, concurred with the findings of the Enquiry Officer and held you guilty of the charges No. 1,2,3 &4 leveled vide charge-sheet dated 20.08.2001. Thereafter you were given notice dated 13.01.2003 and 15.01.2003 to show cause why your services be not dismissed. You have replied to the above show cause notice vide letter dated 17.01.2003.

2. The charges of which you have been guilty are so grave that you can be dismissed severally for each of the charge or collectively for any or for all the charges. We have also examined extenuating and aggravating circumstances and your service record. We are of the opinion that the dismissal from the service will meet the ends of justice. The order are passed accordingly, which will be effective from 06.02.2003.....”

23. It can be clearly noticed from the aforesaid order, that the Management instituted an enquiry against the Appellant in respect of charges relating to misconduct. On filing an application under section 33(2) (b) of the ID Act, the Industrial Tribunal proceeded to frame a preliminary issue relating to the domestic enquiry. This issue is framed by the Industrial Tribunal, to

examine as to whether the decision of the Management to dismiss its employee has been arrived at after following due process and procedure as provided under law. Further, the order dated 10th January, 2005, deciding the preliminary issue was not challenged by the Management prior to the filing of the writ petition. The Management's decision to not challenge the aforesaid order is apparent from the fact that once the Court held the enquiry proceedings to be vitiated; it elected to proceed further by producing evidence before the Industrial Tribunal to prove the charge of misconduct (additional issues). It is well settled that a defective inquiry stands on the same footing as no enquiry. In fact, it was for this reason that the Management was allowed to lead evidence before the Tribunal. The Management could have exercised the right to challenge the findings of Industrial Tribunal on the preliminary issue. It could have assailed the order dated 10th January, 2005 and contended that the Industrial Tribunal had erred in returning such a finding. If such a challenge had been made, the Management would certainly be entitled to urge that the scope of Section 33(2) (b) of the ID Act is a limited one and that the Tribunal could not have examined the merits of the case. The Management could have urged all such grounds as are available under law regarding the jurisdiction of the Court under Section 33(2) (b) of the ID Act. The Management did not do so and proceeded to lead evidence on the additional issues framed before the Court.

24. The additional issues framed as noticed above are concerning the charge of misconduct levelled against the Appellant. It is pertinent to note that, the Management was directed to adduce evidence on the additional issues to

prove the charge of misconduct and thus the scope of the proceedings before the Tribunal stood was widened. This is also clearly discernable from one of the prayer made in the application under Section 33 (2) (b) of the Act, which reads as under:-

“(c) if the enquiry is set aside, then to grant opportunity to the applicant/management to lead evidence to prove the charges before this Hon’ble Tribunal.”

25. In case an enquiry is defective or if no enquiry has been held, the entire case would be open before the Tribunal and the employer would have to justify on facts as well that it’s order of discharge or dismissal was proper. Once the Court embarks upon a trial to decide the issue relating to the charge of misconduct, it would have the jurisdiction to go into the facts and the employer would have to satisfy the Tribunal that on facts the order of discharge or dismissal was proper. The Management is deemed to have waived its right to rely upon the findings of the enquiry officer. Now after a period of five years, the Management cannot be permitted to reopen the finding on the preliminary issue, when the matter has travelled way beyond resulting in rejection of the application on merits. The evidence and the material produced before the Enquiry Officer has lost its evidentiary value. Tribunal has proceeded to decide the additional issues on the basis of the evidence produced by the parties, before it. At this stage, the jurisdiction of the Court to decide the application under Section 33(2) (b) of the ID Act becomes akin to deciding an industrial dispute. In fact as can be noticed in the present case, the Industrial Dispute referred by the Government of NCT stood decided as nil award in view of the findings on the additional issues.

26. The judgments referred to by the learned Single Judge defining the scope of Section 33(2) (b) of the ID Act, are authoritative pronouncements dealing with the Court's jurisdiction. However, the same have been wrongly applied to the facts of the present case. The learned Single Judge has perhaps not noticed the legal effect of the Management's decisions not to challenge the order dated 10th January, 2005 concerning the enquiry proceedings for a period of five years. At a later stage, when the Industrial Tribunal proceeded to conduct evidence on the additional issues and then decided the application by passing the final order dealing with the charge of misconduct on merits, the learned Single Judge ought not to have permitted the Management to assail the order dated 10th January, 2005, particularly after a period of 5 years. While examining the challenge to the final order dated 31st March 2006, the Learned Single Judge could certainly not have relied upon the material produced before the Enquiry Officer. Presently, the impugned judgment has set aside both the orders i.e. 10th January, 2005 as well as 31st March, 2006. As a result, the finding on the preliminary issue is set aside and at the same time, the learned Single Judge has directed the Tribunal to conduct the fresh adjudication on the additional issues that were decided vide order dated 31st March, 2006. An anomalous situation has arisen posing several questions. What is the legal effect of the aforesaid directions? Are the enquiry proceedings now valid in law? If that be so, what would be the effect of the fresh adjudication on merits relating to charge of misconduct, pursuant to the order of remand? The Tribunal has been directed to simultaneously embark upon fresh adjudication both on the preliminary issue and also conduct fresh trial on the charges of misconduct. In fact the trial before the court presupposes an absence or defective enquiry by the

Management. In case there is no enquiry or an invalid enquiry, then obviously the Tribunal will have to weigh the evidence and decide on the preponderance of probabilities whether the charge of misconduct is made out or not. The principle of *prima facie* case has no application as the enquiry in the instant case was found to be a defective enquiry. Allowing the Management to challenge both the orders, as has been done in the present case, has lead to undesirable/incoherent outcome.

27. In our considered opinion, the learned Single Judge erred by proceeding to examine the question relating to the enquiry proceedings. That issue, to our mind, stood conclusively settled vide order dated 10th January 2005, followed by the Management decision to proceed further before the Industrial Tribunal to decide the additional issues. We therefore feel no need to go into the question regarding the applicability of the model standing orders or as to whether in fact the Appellant was denied the right of representation or not. Though on this issue it would not be out of place to mention that in the enquiry proceedings, the Appellant was given an option to have a co-worker represent her. However, the co-worker declined to represent her and the Appellant was left with no other option but to represent herself. Thus she did not have effective representation.

28. Now, coming to the merits of the findings of the Industrial Tribunal regarding the charge of misconduct that have been upset by the learned Single Judge. The Industrial Tribunal has held that there is no *prima facie* evidence against the Appellant that could establish the charge of misconduct. To arrive at this conclusion, the Industrial Tribunal has held

that the testimony of Smt. Sumathi Pillai is hearsay. The misconduct alleged against the Appellant is that she joined the strike along with her co-workmen Marry Kutty and Luxmi Kutty and instigated others to join the dharna from 01.04.2000 to 12.05.2000 along with the dismissed employees. The workmen along with co-workmen Marry Kutty and Luxmi Kutty were advised by their superior Deputy Nursing Superintendent-Smt. Sumathi Pillai, not to indulge in illegal and unjustified acts at the main gate of the hospital.

29. In order to prove this charge, Management examined AW-2, Smt. Sumathi Pillai. In her cross examination, she admitted that she had not seen the Appellant sitting in dharna at the time of alleged incident. Her cross examination reads as under:-

“I personally did not see the workman Poonama on sitting dharna on the alleged incident.

I had not personally seen her, compelling the nurses. However, I came to know about the said facts from others.”

30. Mr. M.K. Kaushik appeared as AW-3. His testimony was only with respect to proving the deposit of one month's salary into the account of the Appellant in compliance of Proviso of Section 33(2) (b) of the ID Act. He also approved the filing of the application and issuance of the charge sheet. He was therefore not a witness to the alleged act that according to the Management was an act of misconduct. The only evidence that could prove the merit of the charge is statement of Smt. Sumathi Pillai, which does not really prove the allegation and has been rightly disregarded by the Industrial

tribunal. It is therefore actually a case of no evidence to sustain the charge of misconduct. The Apex Court in the case of ***Central Bank of India Ltd v. P.C Jain*** AIR (1969)SC983, has held that it is true that Domestic Tribunals, like an enquiry officer, are not bound by the technical rules about Evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which form a part of principles of natural justice, also can be ignored by the Domestic Tribunals.

31. On this aspect also, the learned Single Judge has erred by proceeding to upset the findings of the Industrial Tribunal by confining/restricting the Court's jurisdiction within the ambit of Section 33(2) (b) of the ID Act. This is evident from the observations of the learned Single Judge as noted in para 34 and 35 of the impugned judgment.

32. The judgment of the Apex Court in ***Apparel Export Promotion Council v. A.K. Chopra, 1*** (1999) SLT 212 is not applicable to the facts of the case, as the jurisdiction of the Industrial Tribunal to decide the additional issues concerning the misconduct is quite different from the jurisdiction of a Court deciding a challenge to the findings in disciplinary proceedings. As observed above, the Industrial Tribunal while deciding the additional issues was necessarily required to appreciate the evidence so recorded before it. The material and evidence produced before the Industrial Tribunal was in fact the only basis for the Court to give its findings on the additional issues. We are unable to appreciate as to how the judgments referred to by the learned Single Judge as mentioned in paras 34-35 of the impugned judgment can be applied to the facts of the present case.

33. Lastly, the learned Single Judge has also erred by holding that the jurisdiction of the Tribunal under Section 33(2) (b) of the ID Act is confined to granting approvals/rejecting the application and could not order reinstatement with back wages. Once the Court rejects the application of the Management under the aforesaid provision, necessary/consequential orders should follow. The decision of the management to dismiss the employee did not meet with the requirement of law and therefore as a necessary consequence, the employee would be entitled to consequential benefit of being reinstated in service. This question in fact is no longer *res integra* as is evident from the decision of this Court in **Delhi Transport Corporation v. Nihal Singh**, (2010) 169 DLT 727 wherein it is held as under-

“7. I have recently in DTC v. Rishi Prakash, MANU/DE/0748/2010 dealt with the said aspect. The contention there also was that as per the law laid down in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma, MANU/SC/0030/2002, upon dismissal/rejection of the application under Section 33 (2) (b), the order of dismissal becomes ineffective from the date it was passed and the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. A Division Bench of this Court in Sh. Rajender Singh v. DTC, 98 (2002) DLT 706 has also held that upon rejection of an application under Section 33 (2) (b), the workman is not required to raise an industrial dispute for his reinstatement and is entitled to reinstatement merely for the reason of rejection of application under Section 33 (2) (b).…….”

34. In view of the aforesaid, we are of the considered opinion that the learned Single Judge has erred in allowing the writ petition of the Management.

35. Meanwhile the Appellant has superannuated. Accordingly the following directions are passed:-

- (a) The impugned judgment dated 21st December, 2015 passed by the learned Single Judge in Writ Petition (C) No. 2957 of 2010 and Writ Petition (C) No. 13752 of 2009 are hereby set aside.
- (b) The Respondent-Management shall grant all consequential benefits like back wages, pay fixations etc. to the Appellant as per law in terms of award dated 31st March, 2006 passed by the Industrial Adjudicator.
- (c) The Respondent-Management shall within four weeks pay to the Appellant Rs.30,000/- as costs.

36. The appeal is allowed in the aforementioned terms.

SANJEEV NARULA, J

S. MURALIDHAR, J

December 21, 2018

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